

May 19, 2000

CENTRAL MAINE POWER COMPANY
AND CMP NATURAL GAS, L.L.C.,
Request for Approval of Affiliated Interest
Transaction, Sale of Assets (Property)

ORDER

WELCH, Chairman; NUGENT and DIAMOND, Commissioners

I. SUMMARY

We find Central Maine Power Company's (CMP) Competitive Safeguard Plan adequate to comply with the requirements of our February 18, 2000 Order. However, we caution CMP that its actions may be insufficient to remove all future questions of inappropriate affiliate dealings and articulate general principles that should govern CMP's future dealings involving its rights-of ways. Further, we plan to begin an inquiry to explore questions regarding how electric utility property should be valued in sales to other utilities.

II. BACKGROUND

In our Order dated February 18, 2000 (February 18th Order) in this docket, we conditioned our approval of the transfer of electric corridor property rights from CMP to its gas utility affiliate, CMP Natural Gas, LLC (CMP NG),¹ on compliance with certain competitive safeguards. *Order at 15.* These conditions included the requirement that employees of the affiliates be physically separated from one another and that CMP establish a uniform and open process for entities to obtain information concerning access to, and property rights in, its electric corridors. *Id.* We required CMP and CMPNG to submit for our review a proposal as to how they would fulfill these conditions. *Id.*

CMP filed its proposed Competitive Safeguard Plan on March 10, 2000. CMP proposed to create a website that would provide information about the process for persons to gain access to its electric corridors. CMP and CMPNG also reported on how the companies had complied with the Commission's requirement that CMP and CMPNG physically separate their employees. Specifically, CMP reported that Darrell Quimby, Vice President of CMPNG and Senior Planner for CMP Group, had been relocated to a different office on the fourth floor of the CMP Group building with full walls, rather than partitions, separating it from other offices.

¹ CMP Natural Gas, LLC. recently changed its name to Maine Natural Gas, LLC.

On April 28, 2000, the Hearing Examiner issued a procedural order inviting parties to this proceeding to comment on CMP's and CMPNG's compliance measures and CMP's Competitive Safeguard Plan. The Office of the Public Advocate filed comments on May 10, 2000. No other party, including CMPNG's gas utility competitors (Northern Utilities, Inc. and Bangor Gas, LLC), filed comments on CMP's proposed Competitive Safeguard Plan.

III. DISCUSSION

A. Competitive Safeguard Plan and Personnel Relocation

We find that CMP's and CMPNG's relocation of Darrell Quimby's office and proposed Competitive Safeguard Plan, while arguably not optimum, satisfy the directives in our February 18th Order. We emphasize, however, that our approval of this plan does not ensure that affiliate transactions between CMP and CMPNG will not be subject to further scrutiny. Rather, affiliate transactions are always likely to engender suspicion. However, we note that to the extent CMP and CMPNG comport themselves in a manner that removes the opportunity for or appearance of favoritism between affiliates, the better protection they will have against charges of inappropriate affiliate dealings. So long as an opportunity for or appearance of favoritism exists, CMP and CMPNG may be inviting continued lengthy and expensive proceedings when seeking approvals under 35-A M.R.S.A. § 707.

While we decline to direct CMP on the particulars of how it should develop its property transactions procedures, we suggest some general principles that should govern CMP's process. First, the procedures for securing use of a right-of-way or other CMP property should be visible to all interested parties. Second, CMP must ensure that it treats all interested and potentially interested parties equally. Indeed, CMP should take steps to ensure even the appearance of equal treatment to dispel any argument that it does not pay for a non-affiliate to seek the use of CMP property or right-of-ways. Separate office locations of each affiliate's personnel contribute to a policy and appearance of equal access. We note that the steps CMP has taken with respect to relocating Mr. Quimby's office are barely adequate to address this concern. Third, CMP should thoroughly document its dealings with both affiliates and non-affiliates when it has a situation in which an affiliate is seeking to secure use of CMP property.

In sum, we advise that the way to avoid protracted and costly litigation is to have an open, equal, and well-documented process. What happened in this proceeding should provide CMP and CMPNG with a strong incentive to follow these principles.

B. Pricing Utility Property

We would benefit from an opportunity to develop a more comprehensive understanding of the methods of valuing utility property in transactions involving sales of

rights-of-ways or property adjacent to utility corridors. In particular, there appear to be two pricing models we should analyze. The first involves determining market price given the needs of a particular buyer; the second involves determining the market price without taking into account the needs of a particular buyer, as is used in eminent domain claims. We also would like to evaluate whether or not it should make a difference if the sale is to a public utility or to another affiliate. Finally, we must weigh aspects that may counterbalance other concerns, such as whether the selling utility has optimized revenue and priority of use considerations.

Consequently, we will in the near future open an inquiry to review these issues. In undertaking this review, we will consider the degree to which this remains an issue in Maine, and how other states treat such matters.

Dated at Augusta, Maine, this 19th day of May, 2000.

BY ORDER OF THE COMMISSION

Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch
 Nugent
 Diamond

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within 30 days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320 (1)-(4) and the Maine Rules of Civil Procedure, Rule 73 et seq.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320 (5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.